

App. No. 10/609,018

Amendment under 37 CFR §1.111

REMARKS

Claims 1-4, 6-13, and 15-30 are pending in the application. Claims 1 and 28-30 are independent claims. Claims 1, 6-9, and 27 have been amended, Claims 5 and 14 have been cancelled, and Claims 28-30 have been added. Reexamination and reconsideration of the application, as amended, are hereby respectfully requested.

Restriction/Election

Applicants acknowledge Examiner's withdrawal in the Office Action dated 04/05/2005 of the restriction requirement made in the Office Action dated 12/17/2004.

Allowable subject matter

Examiner has objected to Claims 15 and 16 as being dependent on a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 15 and 16 have been rewritten in independent form as new Claims 28 and 29, respectively, and include all of the limitations of base Claim 1 and intervening Claim 9 (in their original forms). Applicants respectfully submit that Claims 28 and 29 are allowable.

Claim Rejection under 35 USC § 112

Examiner has rejected Claim 27 under 35 USC § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, since Claim 27 recites "Claim 0". Applicants respectfully submit that Claim 27, as amended, particularly points out and distinctly claims the invention. In particular, Claim 27 has been amended to refer to "Claim 1" instead of "Claim 0". Applicants respectfully request withdrawal of the rejection. Applicants respectfully submit that the amendment has been made to correct a typographical error, and is not intended to be a narrowing amendment.

Claim Rejections under 35 USC § 102

Examiner has rejected Claims 1-14 and 17-26 under 35 USC §102(e) as being anticipated by Bowers (US6385376). Applicants respectfully traverse the rejection, since it is believed that Claim 1, as amended, is patentable over Bowers.

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Claim 1, as amended, recites additional areas of core material within each of the claddings that form structural upper cladding surfaces that are positioned against one another upon assembly of the waveguides (as in cancelled Claim 5). Amended Claim 1 further recites that the additional areas of core material are each "positioned so as to substantially avoid optical coupling with the first waveguide core or with the second waveguide core" (as in cancelled Claim 14).

Bowers does not disclose the limitation that each of the additional areas of core material is "positioned so as to substantially avoid optical coupling with the first waveguide core or with the second waveguide core". Since this limitation is absent from Bowers, a rejection of amended Claim 1 under 35 USC §102 is improper, and Applicants respectfully request the rejection be withdrawn.

Applicants respectfully submit that any rejection of amended Claim 1 under 35 USC §103 over Bowers would also be improper. Modification of the device of Bowers to meet the limitations of Claim 1 would render it inoperative. The device disclosed by Bowers is an optical switch. For such a switch to operate, multiple optical couplings are necessary among the waveguide cores and the multiple additional areas of waveguide core material, as is disclosed by Bowers. To meet the limitations of amended Claim 1, optical couplings between the waveguide cores and the additional areas of core material must be eliminated ("positioned so as to substantially avoid optical coupling with the first waveguide core or with the second waveguide core"), rendering the device of Bowers inoperative for its intended purpose. Therefore, any rejection of a claim under 35 USC §103 over Bowers based on such a modification would be improper (*In re Gordon*, 733 F.2d 900, 221 USPQ 1125).

Examiner has not given any specific grounds for rejecting Claim 25 over Bowers. Claim 25 has been rewritten in independent form as new Claim 30, including all the limitations of base Claim 1 (in its original form). Since Bowers does not disclose any structure forming a flow director for an embedding medium, and does not include any teaching, suggestion, or motivation for including such a structure, Applicants respectfully submit that Claim 30 is allowable.

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Conclusion

In view of the above, it is respectfully submitted that Claims 1-4, 6-13, and 15-30 are in condition for allowance. Allowance of Claims 1-4, 6-13, and 15-30 at an early date is earnestly solicited.

Respectfully submitted,

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